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OFFICE OF PETITIONS

In re Application of	:
Donn P. Cummings	: DECISION ON PETITION
Application No. 10/821,632	:
Filed: April 9, 2004	:
Attorney Docket No. DEKA:351US	:

This is a decision on the petition filed August 23, 2004, requesting that the above-identified application be accorded a filing date of April 9, 2004.

On April 9, 2004, applicant deposited the above-identified application. However, on June 24, 2004, the Office of Initial Patent Examination mailed a "Notice Of Incomplete Application" requiring, *inter alia*, drawings of applicant's invention and stating that the filing date would be the date of receipt of the omitted drawings.

On August 23, 2004, applicants filed the present petition and a \$130.00 petition fee, requesting that the above-identified application be accorded a filing date of April 9, 2004. Applicant stated that the application was deposited without drawings on April 9, 2004, because drawings were not necessary for the understanding of the patented subject matter under 35 U.S.C. § 113.

As stated in MPEP § 601.01(f), it is the practice of the United States Patent and Trademark Office (Office) to treat an application that contains at least one process or method claim as an application for which a drawing is not necessary for an understanding of the invention under 35 U.S.C. 113 (first sentence).

MPEP § 601.01(f) also states that:

A nonprovisional application having at least one claim, or a provisional application having at least some disclosure, directed to the subject matter discussed above for which a drawing is usually not considered essential for a filing date, describing drawing figure(s) in the specification, but filed without drawings will be treated as an application filed without all of the drawing figures referred to in the specification as discussed in MPEP § 601.01(g), so long as the application contains something that can be construed as a written description and the names of all the inventors.

This application contains process claims. Therefore, the application should have been treated as an application filed without all of the drawing figures referred to in the specification as discussed in MPEP § 601.01(g).

MPEP § 601.01(g) states that if an application is filed without all of the drawing figure(s) referred to in the specification, a "Notice of Omitted Item(s)" is mailed indicating that the application has been accorded a filing date, but is lacking some of the figures of drawings described in the specification. In view of the above, the requirement for drawings as set forth in the "Notice of Incomplete Application" of June 24, 2004, was mailed in error and is hereby withdrawn.

Accordingly, the petition is **granted**. The application will be accorded a filing date of April 9, 2004, without any drawings.

The \$130.00 petition fee is unnecessary and will be refunded by to Deposit Account No. 50-1212.

The Office of Initial Patent Examination is directed to accord the above-identified application a filing date of April 9, 2004, without any drawings, and to mail a corrected filing receipt.

Any inquiries related to this decision should be directed to the undersigned at (703) 306-5589.

Christina Tartera Donnell

Christina Tartera Donnell
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